



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Aaron Refrigeration Services

File: B-225033

Date: October 28, 1986

DIGEST

Protester's oral complaint to contracting officer before the time for bid opening that solicitation contained "ambiguous and equivocal technical provisions, amendments and specifications" did not constitute a timely protest since an oral complaint to agency does not constitute a protest. Therefore, written protest of alleged solicitation improprieties filed with General Accounting Office more than 2 weeks after bid opening is dismissed as untimely.

DECISION

Aaron Refrigeration Services (Aaron) protests the provisions of invitation for bids No. F27604-86-B-0061, issued by Pease Air Force Base, New Hampshire, for the replacement of furnaces in military family housing units. The protester contends that a solicitation provision in which the government reserved the right to prohibit the installation of replacement furnaces during the heating season, if having the housing unit unheated during periods of severe cold would endanger occupants' health, is unreasonable because it "could result in costing the contractor quite a bit of additional money." The protester suggests that the IFB should be amended to provide that no installation work should be performed until after May 31. Aaron also objects to a solicitation requirement that the contractor respond to requests for service or repair within 2 hours of notification, effective 24 hours per day during the 1-year guarantee period. The protester maintains that bidders must factor this contingency into their bids, which may restrict competition and unnecessarily increase the cost to the government, particularly because this work allegedly duplicates that in an existing maintenance contract. Finally, the protester appears to object to the fact that the contractor would be required to replace furnaces which are less than 5 years old but which, according to the contracting officer, are cracked and "shoot flames out the front of them." The protester argues that

this condition is indicative of a lack of proper servicing and cleaning which should be performed and the furnaces replaced some time after May 31 if that is still deemed warranted.

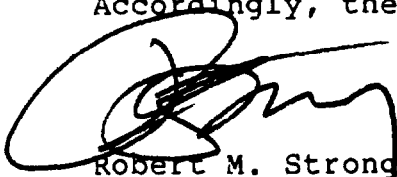
We dismiss the protest.

Aaron states that the protest which it filed with our Office on October 23, 1986, is a "follow up of my oral protest and conversation [with the Contracting Officer and Contract Specialist] the morning of 6 Oct. 86; prior to the 3 p.m. time set for bid opening. . . ."

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986), require that protests such as this, based on alleged improprieties apparent in a solicitation, be filed prior to bid opening. Aaron's protest was not filed with our Office until October 23--more than 2 weeks after bid opening--and, therefore, is untimely.

Although Aaron expressed its concerns about this procurement to the contracting agency prior to bid opening, the firm's oral complaint to the contracting agency did not constitute a protest such that a subsequent protest to our Office would be timely. Oral protests are no longer provided for under the Federal Acquisition Regulation, 48 C.F.R. § 33.101 (1985); K-II Construction, Inc., B-221661, Mar. 18, 1986, 65 Comp. Gen. ___, 86-1 C.P.D. ¶ 270.

Accordingly, the protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel